

**REMARKS**

This is in response to the Official Action currently outstanding with respect to the above-identified application, which Official Action the Examiner has designated as being FINAL.

Claims 1 and 3-12 were present in this application as of the time of the issuance of the currently outstanding FINAL Official Action. Claims 1 and 3-12 currently stand FINALLY rejected by the Examiner. Applicant respectfully requests entry of the foregoing Amendment of Claim 7 whereby Applicant respectfully submits that this application will be placed in condition for allowance, or at least in better form for Appeal, pursuant to 37 CFR 1.116. Applicant by this Amendment does not propose the addition of any new claims, nor does he propose that any claims be withdrawn or canceled. Accordingly, in the event that the Examiner grants entry to the foregoing Amendment, Claims 1 and 3-12 as hereinabove amended will constitute the claims under active prosecution in this application.

The claims of this application are reproduced above including appropriate status identifiers and showing the Amendments sought as required by the Rules.

More specifically, it is noted that in the currently outstanding Official Action, the Examiner has:

1. Not re-acknowledge Applicants' claim for foreign priority under 35 USC §119(a)-(d), nor has he reconfirm that the required certified copies of the priority document have been received by the United States Patent and Trademark Office. **Applicant consequently relies upon the Examiner's previous action in the Official Action in the above-identified application of 22 January 2008 wherein the propriety and complete nature of Applicant's claim for foreign priority was confirmed by the Examiner.**
2. Indicated that Applicants' previous amendment has been entered.

3. Indicated that the drawings filed as part of the above-identified application on 24 February 2004 have been accepted.
4. Not listed the cited and applied U.S. Patent No. 5,198,724 on any of the Forms PTO-892 attached to either of the Official Actions of 22 January 2008 and 25 July 2008 respectively. – **Applicant, therefore, respectfully requests the Examiner to provide an appropriate Form PTO-892 listing the reference described above in response to this communication.**
5. Finally rejected Claims 1, 3-6, 8-10 and 12 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,406,590 to Ebata et al. in view of U.S. Patent No. 5,948,165 to Tamura.
6. Finally rejected Claim 7 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,406,590 to Ebata et al. in view of U.S. Patent No. 5,948,165 to Tamura and U.S. Patent Publication No. 2003/0213561 to Selwyn et al.
7. Finally rejected Claim 11 under 35 USC §103(a) as being unpatentable over Ebata et al. and Tamura as applied to claims 1, 3-6, 8-10 and 12, and further in view of U.S. Patent No. 5,198,724 to Koinuma et al.
8. Provided Applicant with his Response to his previously submitted arguments.

Further comment in these Remarks regarding items 1-4 above is not considered to be necessary in these Remarks.

With respect to items 5-8 above, however, Applicant has reconfirmed its previous belief that the analysis set forth in response to the last Official Action is in fact correct. Furthermore, while the Examiner's citation to Column 21, line 53 through Column 22, line 3 of the Ebates reference does appear to disclose a power absorber for ensuring that unreacted gas is not converted into plasma, **the fact nevertheless remains that at Column 23, lines 44-63, of the Ebates reference it is specifically and unequivocally disclosed that reaction products generated in the local high pressure plasma are discharged through the reaction gas discharging outlet 4 and that the reaction chamber C is constantly evacuated to a vacuum, or at least to a given pressure or less, so that discharged reaction products leaving the local high pressure plasma volume are prevented from being condensed with atmospheric particles or attached to the film surface.** In other words, the evacuation outlets discussed by the Examiner in the context of the Ebates reference **is not only located in a position through one of the electrodes as herein claimed.** Hence, Applicant respectfully submits that the Examiner's failure to find the additional gas discharge referred to in Applicant's response to the next previous Official Action in this application should not (and indeed cannot) be taken as being determinative of the fact that the additional gas discharge to which Applicant has just referred is actually present in the Ebates reference.

Furthermore, Applicant respectfully submits that since an additional gas discharge is specifically disclosed as being present in the Ebates device, not only is the Examiner's position with respect to Claim 9 fully overcome, but also the Examiner's position regarding Claim 1 is overcome as well. This is because the gas supply/gas exhaust of Ebata et al cannot be considered to be either the same as or equivalent to that herein claimed once it has been definitively shown that Ebata contemplates gas discharge portions other than the gas discharge disposed through one of the electrodes as herein claimed.

In addition, Applicant respectfully submits that the foregoing amendment that makes Claim 7 dependent upon Claim 1 fully overcomes the Examiner's currently outstanding rejection of Claim 7.

Furthermore, Applicant respectfully submits that reference to Fig. 9 of the Ebata reference clearly and definitively shows that the top surface of the electrode 5 is covered by the connector 8 that connects the electrode with the flexible power transmission line I. As a result of this disposition of its parts, is that the high-pressure reaction gas supply path 1 and reaction product discharging path 3 of the Ebata reference are connected to electrode 6. It is to be noted in this regard, however, that the place where plasma P is to be generated in Ebata is on the surface of sample J, between electrode 5 and electrode 6 having a difference in potential with insulator 11 interposed therebetween. Therefore, Applicant respectfully submits that to supply reaction gas to the place where plasma P is to be generated and to exhaust the reaction gas, a gas supplying inlet and a gas exhausting outlet are to be provided to electrode 6 and electrode 5, respectively. Consequently, Applicant respectfully submits as well that a structure wherein the gas exhausting means passes through both electrode 5 and the electrode 6 is a structure that would inevitably be employed therein in view of the configuration of the remainder of the apparatus elements disclosed in the Ebata reference.

Hence, Applicant respectfully submits that the Examiner's statement that "the provision of the gas exhausting means defined in claim 1 basically amounts to a change in shape of the gas exhausting means of Ebata" in the currently outstanding Official Action is at best an oversimplification and at worst not an accurate characterization of the Ebata reference. In either event, Applicant respectfully submits that the Examiner's position in the currently outstanding Official Action is not acceptable, and indeed has been fully overcome by the foregoing discussion.

Still further, Applicant notes that the Examiner has relied upon the statement that "the courts have ruled that selections of shape are a matter of choice which a person of ordinary skill in the art will find obvious absent persuasive evidence that the particular configuration of the claimed shape was significant". Applicant respectfully submits, however, that according to the configuration of the invention recited in claim 1 including "gas exhausting means provided through the inside of only the second electrode of said first and second electrodes", the potential is the same inside the second electrode, and thus the effect that plasma or abnormal discharge does not occur even when processing gas exists in the gas exhausting means can be obtained.

Consequently, Applicant respectfully submits that the above configuration as recited in claim 1 cannot reasonably be considered anything other than a "significant configuration", as is supported by the description in the English specification from page 4 line 32 to page 5, line 9.

Accordingly, while Applicant appreciates the Examiner's thorough examination of the subject application, Applicant also respectfully submits that the Examiner's characterizations of the cited art and the present invention are inaccurate in important ways such that the present invention should have been held to be patentable over the cited art rather than unpatentable in view thereof. Therefore, Applicant respectfully traverses the Examiner's currently outstanding FINAL rejections of the claims of this application, and requests reconsideration of the subject application based on the foregoing amendments and remarks.

Applicant also believes that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

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SIGNATURE OF PRACTITIONER

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